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Request for Proposal No. 15-06 Finance & Administrative Services Procurement

Addendum 1
Date Issued: April 11, 2015

THE FOLLOWING LIST INCLUDES CONTRACT LANGUAGE CHANGES AS A RESULT OF SUGGESTIONS/REQUESTS RECEIVED FROM POTENTIAL PROPOSERS.

Section 7.4 shall be removed and replaced in its entirety with the following:

7.4 Contractor's Personnel

- A.** The Contractor will abide by all State and Federal regulations on wages and hours of an employee dealing with the employment relationship between the Contractor and its subsidiaries or related parties and its employees, including but not limited to the Federal National Labor Relations Act, the Federal Fair Labor Standards Act, the Federal Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act.
- B.** The Contractor shall require all prospective employees to show proof of citizenship, or proof from the United States Immigration and Naturalization Service of valid entry permits and/or work permits for legal aliens and proof that such legal aliens are eligible to be employed in the United States. This includes any requirement for participation in the DHS e-Verify or SAVE program.
- C.** Should the Contractor engage employees who are illiterate in English, it will be the Contractor's responsibility and obligation to train such employees to be able to identify and understand all signs and notices in and/or around the areas that relate to them or the services being performed by them pursuant to this Contract. In addition, the Contractor will have someone in attendance at all times who can communicate instructions to said employee.
- D.** The Contractor shall maintain a drug-free workplace within the meaning of the Georgia Drug-free Workplace Act. No employee shall be hired by a

Contractor for work on the City's premises prior to such employee having tested negative for drugs. In addition, existing employees of the Contractor must be subject to drug testing by the Contractor upon reasonable suspicion of drug use. Results of all such drug tests are to be retained by the Contractor. Copies shall be provided to the City, if requested.

- E.** Upon the reasonable request of the City including a demonstration of reasonable cause, tThe Contractor shall transfer promptly from the City any employee or employees that the City Manager or designee advises are not satisfactory, and replace such personnel with employees ~~satisfactory to the City~~possessing the abilities to fulfill the requirements and duties under this Agreement; but in no event shall the City be responsible for monitoring or assessing the suitability of any employee or agent of the Contractor.
- F.** The Contractor's employees shall be instructed that no gratuities shall be solicited or accepted for any reason whatsoever from the tenants, customers or other persons at the City. The Contractor shall be responsible for ensuring that all articles found by its employees on the City's premises are turned over to the City or the City's designated agent in charge of such articles.
- G.** A valid driver license (Commercial Driver License, if applicable) will be required of all personnel operating motor vehicles or motorized equipment on roadways in or around the City.
- H.** While working on city property all Contractors' employees shall wear neat-appearing business casual attire or uniforms and footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.
- I.** Designation of Project Manager - The Contractor shall designate a Project Manager ~~acceptable to the City~~capable of performing all the necessary duties to manage the project for all purposes related to this Contract.
 - 1. The Project Manager shall be fully responsible for the Contractor meeting all of its obligations under this Contract. The Project Manager shall provide the City with an appropriate status report on the progress of the project every week, as well as conduct weekly team status review calls or meeting with the City's Authorized Representative (CAR) during the Contract term, the day to be mutually determined as part of the Project Plan. This report may be delivered by facsimile, e-mail, U.S. postal service, or private carrier, provided it is delivered in a timely manner.
 - 2. The Project Manager shall be available, as reasonably required, to be on-site during necessary times. Such times shall be discussed between the Project Manager and the City, but the final required times will be at the City's discretion.

3. In the event that the designated Project Manager terminates employment with the Contractor, or is requested by the City to be removed from the role of Project Manager (as provided in Section 7.4.I.4), the position shall be assumed by an individual with equivalent the necessary qualifications, experience, and knowledge to perform the duties hereunder. ~~Such replacement shall require the City's prior approval.~~
4. The Contractor shall not replace the approved Project Manager without written approval of the City, which approval will not be unreasonably withheld. – See Section 2.1.7 regarding staff reassignments.
- J. The process by which the implementation partner requests the removal of a team member from the project. If a Contractor replaces a proposed team member, the Contractor shall replace that team member with a new team member of similar experience. ~~The City reserves the right to accept or reject any proposed or replacement team member, with or without cause, at any time during the duration of the project.~~ Pursuant to subsection E above, and to the extent permissible by law, the City retains its rights to request removal of an unsatisfactory replacement, with reasonable basis being derived from any violation of legal HR policies of the City as well as unsuitability for the task being conducted by the replacement team member.

Section 7.7 shall be removed and replaced in its entirety with the following:

7.7 Performance Requirements

- A. The Contractor shall perform all of its obligations and functions under the Contract in accordance with the professional skill and care ordinarily provided by Contractors practicing in the same or similar locality under the same or similar circumstances (herein the "Standard of Care"), and the Contract provisions, industry standards, and any manufacturers' specifications. The Contractor shall adjust and coordinate its activities to the needs and requirements of the City and perform its activities so as not to annoy, disturb, endanger, unreasonably interfere with, or delay the operations or activities of the City.
- B. The Contractor's personnel shall perform work in a neat and professional manner in accordance with the obligations hereunder and as directed by the City Manager, and in compliance with all Federal, State, and City of Dunwoody regulations and OSHA rules and regulations shall be followed at all times.

- C. Dates for commencement and completion of work shall be coordinated with the City's CAR.
- D. Any work required beyond that which is specified herein, shall be reported in advance to the City. At no time shall work beyond the scope be performed without prior written authorization from the City.
- E. The Contractor shall utilize ~~maximum-reasonable~~ safety precautions in accordance with applicable laws, rules and regulations. Tools and equipment will be in a good state of repair, safe to use, and be used in the manner in which they were intended. The Contractor is required to inform all workers and concerned persons of the Material Safety Data on all products being utilized on this project. No materials or equipment will be left unattended or stored on the project site at any time.
- F. Any and all materials generated for or received for this project are property of the City and shall be given to the City as soon as reasonable possible. Electronic delivery of all documentation is generally acceptable provided it is received in its original format. Only the City's CAR will provide for exceptions to this provision. The City's CAR will designate a person to collect these materials.

Section 7.11 shall be removed and replaced in its entirety with the following:

7.11 Compensation - Invoice and Payment for Services

- A. The City shall pay the Contractor, subject to any authorized deductions, the applicable prices set forth for each service authorized by the City, and actually delivered or performed, as the case may be, by the Contractor ~~to the satisfaction and acceptance, as appropriate, of the City~~ in accordance with this Agreement. The timing of such payments shall be as set forth below in this Section.
- B. The City shall pay the Contractor the price as set forth within 30 days after completion of the services, or 30 days after the City's receipt of the invoice, whichever is later. Invoices shall not be submitted more frequently than monthly at the conclusion of each month's performance as set forth in this contract.
- C. The Contractor shall invoice with such supporting documentation and other backup material as the City may reasonably require. At a minimum, monthly billing invoices to the City shall include a production report including monthly recap of hours spent on the Contract segregated by on-site and off-

site hours and percentage of each staff member's time spent solely on City contracted services.

- D.** The Contractor shall deliver to the City for approval and acceptance, and before eligible for final payment of any amounts due, all documents and material prepared by the Contractor for the City under this Contract.
- E.** The City shall pay the undisputed amount of the Contractor's invoice, as it may be reduced to reflect unsubstantiated or unsatisfactory services. Items in dispute shall be paid upon the resolution of the dispute. No verification or payment of any amounts invoiced shall preclude the City from recovering any money paid in excess of that due under the terms of this Contract.
- F.** The Contractor shall be obligated to pay promptly all proper charges and costs incurred by the Contractor for labor and materials used for the work performed hereunder. The City shall have the right, but not the obligation, to pay directly to third parties (including subcontractors), all past due amounts owed by the Contractor to third parties for labor and materials used for the work hereunder, based on invoices submitted by such third party, and all such amounts paid by the City shall be applied toward, and shall reduce, amounts owed to Contractor hereunder.
- G.** Annually, the City will perform a salary review to reconcile the salaries paid for contracted services to the City. Contractor agrees to maintain the equivalent level of expertise for all positions provided by the Contractor throughout the term of the Contract. For purposes of this section equivalent level of expertise will be determined by the number of years of relevant experience, as well as relevant degrees and/or certification in the financial services area. If in the event the Contractor replaces a vacant position with an individual that is not considered to possess the same level of professional expertise (as defined herein) and the Contractor is paying that individual at a lesser pay rate than the previous employee, the Contractor agrees to reimburse the City the difference in the direct labor salary and amount previously billed for direct labor. Such adjustment shall not remove any responsibilities of the Contractor including, but not limited to, Section 7.4 of the Contract.~~Contractor will make available for inspection reports and supporting documentation, sufficient to the City's reasonable satisfaction, showing the direct salaries paid to employees providing services to the City. The City will combine the salaries of the direct employees, the overhead burden ratio and profit margin to determine the amount due for the Contract year. The City will owe the lesser of the not-to-exceed amount shown in Appendix D, Page I or the combined total of the direct salaries, burden and profit margin.~~

- H.** The Contractor shall submit all invoices to: City of Dunwoody, GA, Accounts Payable, 41 Perimeter Center East, Suite 250, Dunwoody, GA 30346.

Section 7.14 shall be removed and replaced in its entirety with the following:

7.14 Indemnification and Insurance

- A.** The Contractor shall indemnify and hold completely harmless the City, and the members (including, without limitation, members of the City's Council, and members of the citizens' advisory committees of each), officers, employees and agents of each, from and against any and all liabilities (including liability under Workers' Compensation Laws), losses, judgments, fines, damages, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, paralegal and expert fees and reasonable attorneys' fees), based on a third-party claim which may be incurred by, charged to or recovered from any of the foregoing by (i) reason or on account of damage to or destruction or loss of any property of the City, or any property of, injury to or death of any person to the extent caused by the Contractor's negligent performance of this Contract, or the negligent acts or omissions of the Contractor's directors, officers, agents, employees, subcontractors, licensees or invitees, or (ii) arising out of or in connection with the failure of the Contractor to exercise the Standard of Care to keep, observe or perform any of the covenants or agreements in this Contract which are required to be kept, observed or performed by the Contractor, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 7.14 (D) below by or in favor of any person described in Section 7.14 (E) below that is attributable to Contractor's negligence, or (iv) to the extent caused by any negligent action by Contractor or its directors, officers, agents, employees, subcontractors, licensees or invitees. The City agrees to give the Contractor reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow the Contractor or its insurer to compromise the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. In any suit, action, proceeding, claim or demand brought in respect of which the City may pursue indemnity, the City shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the City unless the Contractor and the City shall have mutually agreed to the contrary. Contractor agrees to reimburse the City for reasonable defense costs, provided however that such obligation is limited to the portion of such costs equal to the percentage of Contractor's liability as ultimately determined to be caused by the willful misconduct or negligence of Contractor using principles of comparative fault. The indemnification provisions of this Section 7.14 shall survive the

expiration or earlier termination of this Contract with respect to any acts or omissions occurring during the term of the Contract.

- B.** In addition to indemnification provisions stated above, if the City's use of any service, software, firmware, programming, or other item provided by or on behalf of the Contractor is enjoined due to infringement of another person or entity's intellectual property rights, the Contractor shall promptly, at its sole cost and expense, modify the infringing item so that it no longer infringes, procure for the City the legal right to continue using the infringing item, or procure for the City a non-infringing item, or procure for the City a non-infringing replacement item having equal or greater functional capabilities as the infringing item.
- C.** The Contractor shall assume all responsibility for loss caused by neglect or violation of any state, federal, municipal or agency law, rule, regulation or order, caused by its negligence or willful misconduct. The Contractor shall give to the proper authorities all required notices relating to its performance, obtain all official permits and licenses, and pay all proper fees and taxes. It shall promptly undertake proper monetary restitution, in accordance with the indemnity provisions herein, with respect to any injury that may occur to any building, structure, or utility in consequence of its work. The Contractor will notify the City in writing of any claim made or suit instituted against the Contractor because of its activities in performance of the Contract.
- D.** No recourse under or upon any obligation, covenant or agreement contained in this Contract, or any other agreement or document pertaining to the work or services of the Contractor hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or any judgment obtained against the City, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Contract, shall be had against any member (including, without limitation, members of the City's Council, or members of the citizens advisory committees of each), any officer, employee or agent, as such, past, present, or future of the City, either directly or through the City or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for any sum that may be due and unpaid by the City. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, officer, employee, or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for the payment for or to the City, or any receiver therefore or otherwise, of any sum that may remain due and unpaid by the City, is expressly waived and released as a condition of and in consideration of the execution of this Contract and the promises made to the Contractor pursuant to this Contract.

- E.** In any and all claims against the City, or any of their officers, members, agents, servants or employees, by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of the Contractor under this Section 7.14 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Contractor or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.
- F.** No provisions of Section 7.14 herein shall be construed to negate, abridge, or otherwise reduce any other right of indemnity that the City may have as to any party or person described therein.

G. Insurance

1. General Liability and Automobile Liability. The Contractor shall purchase and maintain in force during the term of the Contract, at its own cost and expense, to protect the Contractor, the City, and the members (including, without limitation, all members of the governing City's Council and the citizens' advisory committees of each), officers, agents, and employees of each, from and against any and all liabilities arising out of or in connection with the Contractor's performance of the Contract work:

a) Commercial General Liability Insurance including contractual liability coverage for Contractor's covenants to and indemnification of the City under the Contract, with these required limits:

\$ 2,000,000 General Aggregate
\$2,000,000 Products & Completed Operations Aggregate
\$1,000,000 Personal & Advertising Injury
\$1,000,000 Per Occurrence
\$10,000 Medical Expense, and

b) Automobile Liability Insurance with policy limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per accident. Such insurance is required even if Contractor is not bidding on service areas requiring routine access to motor vehicles. Coverage must include liability for Owned, Non-owned and Hired Vehicles and provide a waiver of subrogation to the City.

c) Contractor shall procure and maintain a policy providing Excess or Umbrella Liability Insurance which is at least as broad as the underlying policy. This insurance, which shall be maintained

throughout the life of the contract, shall be in an amount of not less than \$5,000,000 per occurrence. Coverage must follow form with primary policy and coverage must be as broad as primary policy

2. Self-Insured Retention. Contractor's commercial general liability insurance policies shall not be subject to a self-insured retention exceeding \$10,000, if the value of the Contract is less than \$1,000,000, and not be subject to a self-insured retention exceeding \$100,000, if the Contract is \$1,000,000 or more, unless approved by the City Manager. Contractor's automobile liability insurance policies shall not be subject to a self-insured retention exceeding \$10,000, unless approved by the City Manager.
3. Additional Insured Endorsement (Form CG 20 10 (07/04) and CG 20 37 (07/04) or equivalent). Contractor agrees and shall cause the City their members (including, without limitation, members of the City's Council and members of the citizens' advisory committees of each), officers, employees, and agents to be named as additional insured's under such policy or policies of commercial general and automobile liability insurance. Endorsement must not exclude the Additional Insured from Ongoing or Products - Completed Operations coverage. Coverage shall include a Waiver of Subrogation.
4. Workers' Compensation and Employer's Liability. If Contractor has any employee working on City property, Contractor shall procure and maintain in force during the term of the Contract (i) workers' compensation insurance, and (ii) employer's liability insurance. The policy limits of the Contractor's employer's liability insurance shall not be less than \$1,000,000 for "each accident," \$1,000,000 for "disease policy limit," and \$1,000,000 for "disease each employee." If the Contractor is self-insured, the Contractor shall provide proof of self-insurance and authorization to self-insure as required by applicable state laws and regulations. Contractor shall provide a Workers Compensation waiver of subrogation.
5. Professional Liability Insurance. The Contractor shall purchase and maintain in force during the term of the Contract, Professional Liability insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render professional services under the Contract in the amount of at least TWO MILLION DOLLARS (\$2,000,000.00) per claim. Such insurance must contain nose and tail coverage to include work performed by the Contractor from the project's inception date and until such time as the Statue of Limitations has run for the work done on the project.
6. Health Insurance. Not applicable.
7. Garage Liability Insurance. Not applicable.

8. Garage Keeper's Legal Liability Insurance. Not applicable.
9. Crime Coverage Contractor must provide \$1,000,000 employee dishonesty coverage with coverage extended to 1st and 3rd party claims.
10. Pollution Liability Insurance. Not applicable.
11. Deductibles. The Contractor's policies of insurance required by this Section 7. may require the Contractor's payment of a deductible, provided the Contractor's insurer is required to pay claims from the first dollar at 100% of the claim value without any requirement that the Contractor pay the deductible prior to its insurer's payment of the claim.
12. Other Insurance Requirements. All insurance policies required by Section 7.14 (G). shall provide that they are primary insurance with respect to any other valid insurance the City may possess, and that any other insurance the City does possess shall be considered excess insurance only. All such insurance shall be carried with a company or companies, which meet the requirements of Section 7.15 (B) of these General Conditions, ~~and said policies, shall be in a form satisfactory to the City.~~ A properly completed and executed Certificate of Insurance on a form provided or approved by the City (such as a current ACORD certificate of insurance) evidencing the insurance coverage required by this Section shall be furnished to the City upon the Contractor's execution of the Contract. The Contractor shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Contractor required insurance coverage except that ten (10) days' notice of cancellation for non-payment is required. For purposes of an "adverse material change" shall mean any reduction in the limits of the insurer's liability below the amounts contractually required hereunder, any reduction, non-renewal, or cancellation of any insurance coverage, or any increase in the Contractor's self-insured retention. Prior to the expiration of any such policy, the Contractor shall file with the City a certificate of insurance showing that such insurance coverage has been renewed. If the insurance coverage is canceled or reduced below the requirements herein, the Contractor shall, within five (5) days after such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by the City. If the Contractor fails to obtain or have such insurance reinstated, the City may, if it so elects, and without waiving any other remedy it may have against the Contractor, immediately terminate this Contract upon written notice to the Contractor. ~~The City Manager shall have the right to alter the monetary limits or coverage herein specified from time to time during the term of this Contract, and the Contractor~~

~~shall comply with all reasonable requests of the City Manager with respect thereto.~~

Section 7.18 shall be removed and replaced in its entirety with the following:

7.18 Default and termination

A. In the event that:

1. The Contractor shall repeatedly fail (defined for this purpose as at least three (3) failures within any consecutive twelve (12) month period) to keep, perform or observe any of the promises, covenants or agreements set forth in this Contract (provided that notice of the first two (2) failures shall have been given to the Contractor, but whether or not the Contractor shall have remedied any such failure); or
2. The Contractor shall fail to keep, perform or observe any promise, covenant, or agreement set forth in this Contract, and such failure shall continue for a period of more than ~~five (5)~~ten (10) business days after delivery to the Contractor of a written notice of such breach or default; or
3. The Contractor's occupational or business license shall terminate or the Contractor shall fail to provide the City with any bond, letter of credit, or evidence of insurance as required by the Contract Documents, for any reason; or
4. The Contractor fails for any reason to provide the City with an acceptable renewal or replacement bond or letter of credit within the time period specified by a provision of this Contract; or
5. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
6. The Contractor shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute filed against it, which petition is not dismissed within thirty (30) days after the filing thereof; or

7. There is any assignment by the Contractor of this Contract or any of the Contractor's rights and obligations hereunder for which the City has not consented in writing; or
8. The Contractor shall default on any other agreement entered into by and between Contractor and the City, then, in its discretion, the City shall have the right to terminate this Contract for default, which termination shall be effective upon delivery of written notice of such termination to the Contractor. In the event that the City terminates this Contract for default, or the Contractor abandons or wrongfully terminates the Contract, the Contractor shall be paid for compensation earned to the date of termination or abandonment (but the City shall have the right to reduce by off-set any amounts owed to the Contractor hereunder ~~or under any other Contract or obligation~~ by the amount of the City's direct and commercially reasonable damages and any amounts owed by the Contractor to the City), but the Contractor shall not be compensated for any profits earned or claimed after the receipt effective date of the City's notice of termination by default or after abandonment or wrongful termination. The City's election to terminate or not to terminate this Contract in part or whole for the Contractor's default shall in no way be construed to limit the City's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Contract or otherwise provided by law or equity.
- B.** Notwithstanding anything else herein contained, the City may terminate this Contract in whole or in part at any time for its convenience by giving the Contractor ~~thirty (30)~~ninety (90) days written notice. In that event, the Contractor shall proceed to complete any part of the work, as directed by the City, and shall settle all its claims and obligations under the Contract, as directed by the City. The Contractor shall be compensated by the City in accordance with the provisions hereof, including in particular Section 7.2 of these General Conditions which shall include a reasonable allowance for costs associated with demobilization and subcontract termination, if any, provided, however, that in no event shall Contractor be entitled to compensation for work not performed or for anticipatory profits. Contractor shall justify its claims, as requested by the City, with accurate records and data.
- C.** Bankruptcy and Liquidation - In the event the Contractor (1) makes an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) has had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or

an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; (4) takes any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permits any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing the Contractor or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Contract or any agreement supplementary hereto, the City shall have the following rights:

1. In the event of a rejection of this Contract or any agreement supplementary hereto, the City shall be permitted to retain and use any back-up or archival copies of the software licensed hereunder under this Agreement for the purpose of enabling it to mitigate damages caused to the City because of the rejection of this Contract. The City shall exert reasonable efforts to mitigate such damages by use of such back-up or archival copies.
2. In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the City to, as applicable, the Contractor or the bankruptcy trustee or receiver. The Contractor or such bankruptcy trustee or receiver shall not interfere with the rights of the City as licensee as provided in this Contract or in any agreement supplementary hereto to obtain the Source Material(s) from the bankruptcy trustee and shall, if requested, cause a copy of such Source Material(s) to be available to the City.
3. In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights of setoff with respect to this Contract under the Bankruptcy Code or applicable non-bankruptcy law; or in the event of a rejection of this Contract or any agreement supplementary hereto, the City may retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights under section 503(b) of the Bankruptcy Code.

Section 7.20 shall be removed and replaced in its entirety with the following:

7.20 Assignment

Neither this Contract nor any of the Contractor's rights or obligations hereunder may be assigned by the Contractor without the City's prior written consent, which consent ~~may be granted or withheld at the City's sole discretion~~ shall not be unreasonably withheld. Any transfer of this Contract by merger, consolidation or liquidation (unless the stock of the Contractor is traded on a national stock exchange or in a generally recognized over the counter securities market) or any change in ownership of or power to vote a majority of the outstanding voting stock or ownership interests of the Contractor shall constitute an assignment of this Contract for purposes of this Section. In the event the Contractor assigns or subcontracts ~~or attempts to assign or subcontract~~ any right or obligation arising under this Contract without the City's prior written consent, the City shall be entitled to terminate this Contract pursuant to the provisions of Section 7.17 hereof. Notwithstanding any assignment or subcontract, Contractor shall be responsible for any violations of this Agreement by its assignee or subcontractor and the City shall have no responsibility to otherwise charge any subcontractor or assignee with any default of breach of this Agreement as a result.

Section 7.24 shall be removed and replaced in its entirety with the following:

7.24 General Provisions

- A.** The Contract Documents consist of the Contract, the Proposal Forms, the Instructions to Bidders, Request for Proposals, all Addendum(s) issued prior to execution of this Contract, these General Conditions, and the Scope of Work. Together, these documents comprise the Contract and all the documents are fully a part of the Contract as if attached to the Contract or repeated therein. Precedence of the Contract Documents shall be as follows: (i) addendum(s) to the Contract Documents, (ii) the Contract, (iii) the General Conditions (iv) the Proposal Forms, (v) the Instructions to Bidders, (vi) the Scope of Work, and (vii) the Request.
- B.** This Contract represents the entire agreement between the parties in relation to the subject matter hereof and supersedes all prior agreements and understandings between such parties relating to such subject matter, and there are no contemporaneous written or oral agreements, terms or representations made by any party other than those contained herein. No verbal or written representations shall be relied upon outside the Contract terms and amendments. Without exception, all deletions or additions to the scope of work will be set forth in a written amendment to this Contract. No amendment, modification, or waiver of this Contract, or any part thereof, shall be valid or effective unless in writing signed by the party or parties sought to be bound or charged therewith; and no waiver of any breach or

condition of this Contract shall be deemed to be a waiver of any other subsequent breach or condition, whether of a like or different nature.

- C.** The Contractor shall, during the term of this Contract, repair any damage caused to real or personal property of the City and/or its tenants, wherever situated, caused by the intentional, reckless, or negligent acts or omissions of the Contractor's officers, agents, or employees, and any subcontractors and their officers, agents, or employees, or, at the option of the City, the Contractor shall reimburse the City for the cost of repairs thereto and replacement thereof accomplished by or on behalf of the City.
- D.** The Contractor warrants to the City that no work performed or materials purchased pursuant to the Contract, whether by, from, or through the Contractor or a subcontractor, shall cause any claim for payment, lien or encumbrance to be made against any property of the City, and the Contractor shall indemnify and save the City harmless from and against any and all losses, damages and costs, including attorneys' fees, with respect thereto. If any such claim, lien or encumbrance shall be filed, the Contractor shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. This provision shall survive the expiration or termination of the Contract.
- E.** The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either the City or the Contractor. This Contract shall be deemed to be made, construed, and performed according to the laws of the State of Georgia. Any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of this Contract or any matter in connection therewith shall be brought exclusively in a court of competent jurisdiction in DeKalb County, Georgia, and the Contractor waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Contractor agrees to submit to the jurisdiction of the Georgia courts and irrevocably agrees to acknowledge service of process when requested by the City
- F.** The section headings herein are for the convenience of the City and the Contractor, and are not to be used to construe the intent of this Contract or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.
- G.** The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

- H. The delay or failure of ~~the City~~either Party at any time to insist upon a strict performance of any of the terms, conditions, and covenants herein shall not be deemed a waiver of that breach or any subsequent breach or default in the terms, conditions, or covenants of this Contract. The Contractor shall not be relieved of any obligation hereunder on account of its failure to perform by reason of any strike, lockout, or other labor disturbance.
- I. For Claims other than professional liability, if the City shall, without any fault, be made a party to any litigation commenced between the Contractor and a third party arising out of the Contractor's negligent operations and activities or willful misconduct at the premises, then the Contractor shall pay all costs and reasonable attorney's fees incurred by or imposed upon the City in connection with such litigation for all trial and reasonable and legally justifiable appellate proceedings. The City shall give prompt notice to the Contractor of any claim or suit instituted against it by such third party. The provisions of this Section supplement and are not intended to be in lieu of the indemnification provisions of Section 7.14 hereof. The provisions of this Section shall survive the acceptance of the services and payment therefore, and the expiration or earlier termination of this Contract.
- J. ~~The City~~In the event of a dispute, the prevailing party, as determined by a Court of competent jurisdiction or mutually agreeable arbitrator, shall have the right to recover from the Contractor all of the City's costs and expenses incurred in enforcing the provisions of this Contract including, but not limited to, (1) the cost of administrative investigation and enforcement (including, without limitation, audit fees and costs, attorneys' fees) and (2) the reasonable cost of any trial, ~~appellate or bankruptcy proceeding~~ (including, without limitation, investigation costs, audit fees and costs, attorneys' fees, court costs, paralegal fees and expert witness fees). This provision shall survive the expiration or termination of the Contract.
- K. The Contractor shall be required, during the term of the Contract, at no additional cost to the City, to take such reasonable security precautions with respect to its operations at City Hall as the City in its discretion may from time to time prescribe. The Contractor shall comply with all regulations, rules, and policies of any governmental authority, including the City, relating to security issues.
- L. The City may, but shall not be obligated to, cure, at any time, upon ~~five (5)~~ten (10) business days written notice to the Contractor (provided, however, that in any emergency situation the City shall be required to give only such notice as is reasonable in light of all the circumstances), any default by the Contractor under this Contract; whenever the City so cures a default by the Contractor, all direct and commercially reasonable costs and expenses incurred by the City in curing the default, including, but not limited

to, reasonable attorneys' fees, shall be paid by the Contractor to the City ~~on demand~~upon a reasonable showing and documentation therefore.

- M.** The Contractor and its subcontractors, if any, shall maintain complete and accurate books and records in accordance with generally accepted accounting principles, consistently applied, and shall be in a form ~~reasonably acceptable to the City Manager or designee~~as required by this Contract. The Contractor and its subcontractors shall provide a reasonable accounting for ~~of~~ all expenses incurred in its performance of its obligations hereunder and ~~of any nature~~ related to transactions in connection with this Contract in a manner, which segregates in detail those transactions from other transactions of the Contractor and subcontractors and which support the amounts reported and/or invoiced to the City. At a minimum, the Contractor's and subcontractor's accounting for such expenses and transactions shall include such records in the form of electronic media compatible with or convertible to a format compatible with computers utilized by the City at its offices; a computer run hard copy; or legible microfilm or microfiche, together with access to the applicable reader. All such books and records and computerized accounting systems, shall upon reasonable notice from the City be made available in DeKalb County, Georgia, for inspection, examination, audit and copying by the City through and by its duly authorized representatives at any time for up to four (4) years after the year to which books and records pertain. Such inspection, examination, or audit may include, but is not limited to a review of the general input, processing, and output controls of information systems, using read only access, for all computerized applications used to record financial transactions and information. The Contractor and subcontractor shall freely lend its own assistance in a timely manner in making such inspection, examination, audit, or copying and, if such records are maintained in electronic and other machine readable format, shall provide the City and/or its representative such assistance as may be required to allow complete access to such reasonably necessary records. The City Manager may require the Contractor and subcontractors to provide other records the City Manager, ~~in his or her sole discretion~~, deems necessary to enable the City to perform an accurate inspection, examination or audit of expenses incurred in and transactions related to performance of this Contract. Such records shall be provided within thirty (30) days of request thereof. In the event that expenses incurred or reimbursed are found by such inspection, examination, or audit to have been overpaid, the Contractor and its subcontractors agree that such amounts shall be payable to the City. If, prior to the expiration of the above-stated four (4) year record retention period, any audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Contract by the City, the Contractor, or a third party, shall continue to maintain all such records, and the City shall continue to have the right to inspect such records in the manner stated above, until the inspection, examination, audit, claim, or litigation is finally resolved

(including the determination of any and all appeals or the expiration of time for an appeal). This provision shall survive the expiration or earlier termination of this Contract. In the event of any conflict between any provision of this Contract and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Contract shall control even where this Contract references such provisions or standards. In particular, without limitation, the Contractor and subcontractors shall maintain all records required under this Contract to the full extent required hereunder, even if some or all such records would not be required under such generally accepted accounting principles or auditing standards. If as a result of an inspection, examination or audit, it is established that amounts are due from the Contractor to the City, the Contractor shall forthwith, upon written demand from the City, pay the City such amount, together with interest on the amount due at the rate of eighteen (18%) percent per annum, or if less, the maximum rate of interest allowed by law, from the date such additional amounts were overpaid by the City. Further if such inspection, examination or audit establishes that the Contractor has over billed such amounts for any Contract period by two (2%) percent or more, then the entire expense of such inspection, examination or audit shall be paid by the Contractor.

- N.** The City shall, in its discretion, be entitled to deduct from the compensation to which the Contractor is otherwise entitled hereunder, an amount equal to any liabilities of the Contractor to the City, which are then outstanding. In the event that additional work beyond the scope of this Contract is requested by the City Manager and it results in any extra charges to the City, the Contractor shall so advise the City in writing of the amount of the extra charges. The City is not required to pay any extra charges for additional work unless such work and the charges therefore have been approved in advance and have been confirmed in writing within twenty-four (24) hours by the City.
- O.** The Contractor is an independent contractor and nothing contained herein shall be construed as making the Contractor an employee, agent, partner, or legal representative of the City for any purpose whatsoever. The Contractor acknowledges that it does not have any authority to incur any obligations or responsibilities on behalf of the City, and agrees not to hold itself out as having any such authority. Nothing contained in this Contract shall be construed to create a joint employer relationship between the City and the Contractor with respect to any employee of the Contractor or of its subcontractors.
- P.** The Contractor and subcontractors shall prepare and provide the City with all detailed reports as required under the Contract on a timely basis. The City reserves the right to modify the reporting procedures or the form and content of any report, as it deems necessary. However, to the extent that

any increased reporting requirements or demands cause an increase in Contractor's cost of performance hereunder, the parties shall negotiate in good faith a reasonable increase in the fee hereunder due to such increased reporting requirements.

- Q.** There are no third party beneficiaries to this Contract and nothing contained herein shall be construed to create such.
- R.** Time is of the essence for the performance of each of the Contractor's obligations under this Contract. The foregoing notwithstanding, any delays in or failure of performance by Contractor shall not constitute breach hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Contractor. In the event that any event or force majeure as herein defined occurs, Contractor shall be entitled to a reasonable extension of time for performance of its Services under this Contract.
- S.** In computing any period of time established under this Contract, except as otherwise specified herein the word "days," when referring to a period of time that is ten (10) days or less means business days, and when referring to a period of time that is more than ten (10) days means calendar days. The day of the event, from which the designated period of time begins to run shall not be included. A business day is any day other than Saturday, Sunday, or Federal, State of Georgia or City holidays.
- T.** The Contractor agrees to perform all acts and execute all supplementary instruments or documents, which may be reasonably necessary to carry out or complete the transaction(s) contemplated by this Contract.
- U.** The City reserves the right to further develop, improve, repair and alter the facilities and all roadways, and parking areas, as it may reasonably see fit, free from any and all liability to the Contractor for loss of business or damages of any nature whatsoever to the Contractor occasioned during the making of such improvements, repairs, alterations and additions, including, but not limited to, any damages resulting from negligence of the City or its employees, agents or contractors.
- V.** The Contractor and the City hereby mutually waive any claim against each other and their respective members, officials, officers, agents and employees for damages (including damages for loss of anticipated profits) caused by any suit or proceedings brought by either of them or by any third party directly or indirectly attacking the validity of this Contract or any part thereof, or any addendum or amendment hereto, or the manner in which this Contract was solicited, awarded or negotiated, or arising out of any judgment or award in any suit or proceeding declaring this Contract, or any

addendum or amendment hereto, null, void or voidable or delaying the same, or any part thereof, from being carried out.

- W.** At the option of the Contractor, the products and/or services provided under the Contract resulting from this solicitation may be provided to other governmental agencies, including the State of Georgia, its agencies, political subdivisions, counties and cities under the same terms and conditions, including price, as such products and/or services are provided under this Contract. Each governmental agency allowed by the Contractor to purchase products and/or services in connection with this Contract shall do so independent of the City or any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods and services ordered, received, and accepted by it. The City shall have no liability to the Contractor or any governmental agency resulting from the purchase by that agency of products and/or services from the Contractor in connection with this Contract.

* * * * * END OF ADDENDUM * * * * *